

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

 v. : CRIMINAL NO. 02-656-03

FRANK CHINA :

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by its attorneys,
Patrick L. Meehan, United States Attorney for the Eastern
District of Pennsylvania, and Anthony J. Wzorek, Assistant
United States Attorney for the District, hereby files a
sentencing memorandum in the above captioned case.

I. INTRODUCTION

A federal grand jury returned an indictment on
October 8, 2002, charging Frank China with conspiracy to
possess with intent to distribute 500 grams or more of
cocaine, in violation of Title 21, United States Code,
Section 846, and two counts of interference with interstate
commerce by robbery, in violation of Title 18, United States
Code, Section 1951. These charges arose out of the theft of
drug money and approximately one kilogram of cocaine by the

defendant and his co-defendants. After a jury trial, on July 2, 2003, the defendant was convicted of all charges.

II. FACTUAL SUMMARY

Deon Steave testified that he received a telephone call, approximately in June 2000, from a male whom he had previously met in prison, Terrence Perkins, a/k/a "Bones." Perkins stated that he had "hydro" (hydroponic) marijuana for sale at \$5,000 per pound, and Steave agreed to purchase four pounds of it.

On June 27, 2000, Steave traveled to the Philadelphia area with a friend, Brynda Pope, and carried with him approximately \$10,000 in United States currency, which he placed in a purple Crown Royal bag in the trunk of their rental vehicle. He intended to use this money to purchase the marijuana.

On June 28, 2000, co-defendant Perkins picked up Steave at the Adams Mark Hotel, and they rode around in Perkins' vehicle in Philadelphia, looking for a drug source, with negative results. During the course of the day, Steave gave the bag with the money to Perkins at least one time in

an effort to buy the drugs. After several hours, Steave decided to go home, and, in the afternoon, Perkins took Steave to the King of Prussia Mall, where Brynda Pope was waiting with the rental car. When Steave exited Perkins' vehicle, they shook hands, and Steave noticed a marked state police car parked several rows away from Steave's vehicle. Steave entered his rental vehicle and Pope drove out of the parking lot and attempted to enter onto Interstate 76, near the toll booth for the Pennsylvania Turnpike. A state police car followed Steave and Pope, put on his emergency lights, and pulled them over on the shoulder of the road. Trooper Frank China approached the vehicle, asked Steave and Pope for their drivers' licenses and the vehicle registration, and returned to the state police car. China returned to the rental car shortly thereafter and got Steave out of the car. Steave was handcuffed and put in the back of the state police car. China returned to the rental car, removed the keys, quickly searched the inside of the car, and recovered the bag of money, which Steave believed had been in the glove compartment. China returned to the state police car and asked Steave what he was doing with the

money. Steave told China that he was considering purchasing real estate. After further discussion, China said that he was going to consider this as a pass. China said that if he was a white cop, Steave would be going to jail. He also told Steave that another trooper was waiting down the road if Steave did anything wrong. China returned to the rental car and gave a piece of paper to Brynda Pope. Steave later learned that this paper was a Form DL-640 confiscation slip made out for the confiscation of an unknown amount of money and signed with the name "Trooper Robert Miller."¹ China took Steave out of the state police car, removed the handcuffs, and released him. Steave returned to the rental car, and China sped off in the state police car. After they started driving, Steave called Perkins on the telephone and told him what happened.² Brenda Pope later gave Steave the confiscation slip.

¹ A witness from the Pennsylvania State Police testified that PSP records do not show that this money was ever turned in to the custody of the PSP.

² Toll records showed a call to Perkins' phone at 5:04 p.m.

In July 2000, Steave approached a PSP trooper, James Boyd, whom he knew in the Pittsburgh area and asked about the \$10,000 that had been seized from him. Steave gave Boyd the DL-640 confiscation slip and the trooper agreed to investigate the situation. The trooper forwarded the information to his supervisors, who in turn forwarded it to the PSP Internal Affairs Division (IAD), which initiated an investigation.

A witness from the Pennsylvania State Police testified that a review of the duty roster for PSP Troop K Patrol Unit for June 28, 2000 revealed that Trooper China worked a scheduled shift from 3:00 p.m. to 11:00 p.m. in a marked patrol unit. A review of China's mobile unit log for that date indicated that he only responded to one incident, K01-1089669, a "collision-gone on arrival," at SA 76 E/B marker 330.7, from 4:32 p.m. to 4:39 p.m. Furthermore, an off-line search of the PSP CLEAN system revealed that someone conducted a query/investigation of Steave's vehicle using a computer terminal at Troop K at approximately 4:04 p.m. on June 28, 2000. In addition, lab tests were conducted by the PSP Bureau of Forensic Services, Harrisburg

Regional Laboratory, on the PSP DL-640 confiscation slip for the money seized from Steave by the trooper on June 28, 2000. After examining the slip given to Brynda Pope by the trooper, the lab raised the impression "FRA O CH NA" from the officer's name block and "7106" from the badge number block. Writing samples obtained from various PSP reports prepared by Trooper China revealed that he consistently prints his name as "TPR FRANK O CHINA." In addition, China's PSP badge number is 7106.

Brynda Pope testified that, on June 27, 2000, she accompanied Deon Steave on a trip from Pittsburgh to Philadelphia, Pennsylvania. Pope came to Philadelphia to do some shopping and to get away from the Pittsburgh area for awhile. Once in Philadelphia, a friend of Steave's led them to the Adams Mark Hotel. The next day, she went shopping, taking the rental car, and assumed that Steave met up with his friend. Later that day, Pope and Steave agreed to meet at the King of Prussia mall to plan their trip back to Pittsburgh. When she met Steave at the mall, he was with the same friend from the day before (Perkins). Steave got into their rental car, and they started off towards the

Pennsylvania Turnpike. Although she had not committed any traffic violations, Pope noticed that she was being followed by a state trooper, who eventually pulled them over. She first noticed this state trooper as she was exiting the mall parking lot. China came up to the car, asked for identification, and said that he wanted to check the car. After checking Pope's identification, he took Steave's identification and went back to the patrol car. Soon thereafter, he placed Steave in the back of the patrol car. Pope gave him permission to search the vehicle since she had no stolen goods, but was unclear about when this search took place. While China took Steave back to the patrol car, Pope took the Crown Royal bag of money out of the glove compartment and placed it on the passenger seat. When China saw the bag, he looked into the bag and then went back to the patrol car. He let Steave go, after giving her a piece of paper saying that an unknown amount of money had been taken. He told them to leave and that someone would be watching them all the way down the road.

Terrence Perkins admitted that he met Frank China in approximately May 2000 through a friend, Robert Johnson.

Perkins met Deon Steave in state prison. After they both got out of prison, Steave called Perkins and asked if Perkins knew a way that Steave could buy some dope. Perkins told Steave to come to Philadelphia, and Steave agreed to do so. Steave arrived in Philadelphia with a girlfriend and they all met near Broad and Vine in Philadelphia in June 2000. Perkins said that, after running around all day waiting for the supplier to bring the heroin, he and Johnson decided to use China to take the money. Perkins realized that he had to get Steave on a state highway and wait until China came on duty at 2:00 p.m. They drove to the King of Prussia Mall, and once at the mall, he observed Frank China in the parking lot, in his marked state police car. Perkins left, and about an hour later, he met Johnson at Johnson's mother's house on Michener Avenue, and he got approximately \$6500-7000 of the money taken from Steave. The money was still in the purple Crown Royal bag. Just after Steave was stopped, Steave called him and told Perkins that a state trooper had stopped him and ripped him off.

Perkins also stated that, between July 2000 and September 2000, he told a guy, identified here as T.B., that

someone wanted to buy three kilograms of cocaine. Perkins and Johnson had talked about the situation and agreed to rip off T.B. T.B., however, could only come up with one kilogram of cocaine. Perkins told T.B. that the buyer wanted to meet on City Line Avenue. When Perkins and T.B. drove toward City Line Avenue, China, who was waiting in the gas station at Fox Street and Roosevelt Boulevard in his Pennsylvania State Police car, followed behind them and eventually pulled them over at the City Line exit. China came up to the car, asked for T.B.'s license and registration, and then told T.B. that he knew he was on parole. China later told Perkins, that after T.B. got out of the car, he told China that there was a kilo of cocaine in the car and it belonged to Perkins. China then got Perkins out of the car, handcuffed Perkins, and put him in the back of the state police car. China then retrieved the cocaine, packaged in a blue Gap bag, said something to T.B., and left with Perkins. They drove through the State Police Belmont barracks parking lot, and eventually made their way to a parking lot near a soccer field on Schoolhouse Lane, where Rob Johnson was waiting. China took the handcuffs off

Perkins, and Perkins and Johnson left with the cocaine. Johnson and Perkins split the cocaine in half and Johnson said that he would pay China from his half.

Frank China testified at trial and admitted stopping Deon Steave, Brynda Pope, and T.B. while on duty as a Pennsylvania State Trooper, but he denied taking any money or drugs from them.

III. MAXIMUM SENTENCE

The maximum sentence for a violation of Title 21, United States Code, Section 846, conspiracy to possess with intent to distribute over 500 grams of cocaine, is not less than 5 years to not more than 40 years imprisonment, a four year term of supervised release to a possible lifetime of supervised release, a fine of \$2,000,000, and a special assessment of \$100.

The maximum sentence for each violation of Title 18, United States Code, Section 1951, interference with interstate commerce by robbery, is 20 years imprisonment, a three year period of supervised release, a \$250,000 fine, and a \$100 special assessment.

The total maximum sentence is thus not less than 5 years to not more than 80 years imprisonment, a four year term of supervised release to a possible lifetime of supervised release, a fine of \$2,500,000, and a special assessment of \$300.

IV. SENTENCING GUIDELINES

The defendant's sentencing guideline range, as computed in the Presentence Investigative Report (PSI), based upon a total offense level of 31 and a criminal history category of I, is 108 to 135 months imprisonment. Both the government and the defense have filed objections to the PSI.

V. DEFENSE OBJECTIONS

a. The defendant first objects to a two level increase, at ¶24, for abuse of trust, pursuant to Section 3B1.3 of the Sentencing Guidelines. The defendant argues that his status as an active Pennsylvania State Trooper did not facilitate the charges in Count One, which charged

possession with intent to distribute 500 grams or more of cocaine.¹

The defendant simply is wrong. The basis of this charge, conspiracy to possess with the intent to deliver, as it relates to Frank China, is the seizure and possession of the kilogram of cocaine from T.B. near City Line Avenue, by China, while he was employed as a state trooper. It is only through utilizing his status and authority as a state trooper that China is able to stop T.B.'s car and get him to "voluntarily" give up the kilogram of cocaine that is the subject of this count. Because China "abused a position of public or private trust . . . in a manner that significantly facilitated the commission or concealment of the offense," U.S.S.G. §3B1.3, the two level adjustment is appropriate.²

¹ Specifically, the defendant argues that China's position did not facilitate the delivery of controlled substances. Count One does not charge delivery of controlled substances, but rather charges possession with the intent to deliver over 500 grams of cocaine. This charge is established once China, using his status as a state trooper, improperly seizes the kilogram of cocaine from T.B. and intends to deliver it to someone else, in this case, Rob Johnson.

² To suggest that China's abuse of his position as a state trooper had nothing to do with this seizure of the kilogram of cocaine is to argue that a private citizen would

See United States v. Sierra, 188 F.3d 798, 802-03 (7th Cir. 1999)(policeman abused his position of trust when he used badge to facilitate entry into store that he robbed); United States v. Parker, 25 F.3d 442, 450 (7th Cir. 1994)(state trooper used position to facilitate robberies).

b. The defendant next objects to a two level increase, at ¶28, for physical restraint of the victim. The defendant argues that because "it is inherent in the robbery count that he acted 'under color of state law,'" China had the authority to stop and detain any criminal suspect within the scope of his duties.

The defendant is wrong. Under Section 2B3.1(b)(4)(B), if any person was physically restrained to facilitate commission of the offense, an increase of two levels is appropriate. The term "physically restrained" is defined as meaning the forcible restraint of the victim such as being tied, bound or locked up. U.S.S.G. §1B1.1, comment. (n.1(h)). In this case, China removed Deon Steave

have been able to somehow stop T.B.'s car and take a kilogram of cocaine from T.B.'s possession without T.B.'s complaint.

from Brynda Pope's car, handcuffed him, and placed him in the back of the state police car. China then conducted his search of Brynda Pope's car, eventually found the Crown Royal bag containing Steave's money, and stole the money and bag. China's actions of restraining Steave and keeping him in the state police car clearly facilitated the theft of Steave's money from Pope's car. It avoided any complaints from Steave and allowed China to suggest to Steave that he was giving him a break by taking the handcuffs off and allowing him to continue his trip. As such, his actions merit the two level adjustment under Section 2B3.1(b)(4)(B).³

c. The defendant next argues that, at ¶¶ 24 and 30, a two level increase pursuant to U.S.S.G. §3B1.3 is

³ The defendant is confused in arguing that "it was inherent in the robbery count that he acted 'under color of state law.'" No such language is included in the definition of robbery found in 18 U.S.C. § 1951(b)(1). Such "color of law" language is found in the definition of extortion. However, in this case, China was charged with interference with interstate commerce by robbery, not interference with interstate commerce by extortion under color of official right. The defendant's efforts to read the phrase "under color of official right" into the robbery definition are meritless.

inappropriate because it is double counting. The defendant again asserts that "Mr. China was indicted with robbery, with the claim that he stole from another while acting under color of state law." As argued above, see fn.3, supra, the defendant was not charged with robbery under color of state law. No such crime exists under 18 U.S.C. § 1951. The defendant was simply charged and convicted of Hobbs Act robbery, defined as unlawfully obstructing, delaying and affecting commerce, and the movement of articles and commodities in commerce, by robbery, in that the defendant did unlawfully take and obtain property and things of value from another, against his will, by means of actual and threatened force, violence, and fear of injury, immediate and future, to person and property. Because violations of 18 U.S.C. § 1951 are calculated under Sentencing Guidelines Section 2B3.1, a section that does not include an abuse of trust adjustment in its base offense level or specific offense characteristics, the two level adjustments under Section 3B1.3 are appropriate. Any effort by the defendant at this stage to change the indictment is fruitless.

Furthermore, it is beyond argument that in stealing a kilogram of cocaine and cash from two separate victims, while on duty as a state police trooper, that the defendant "abused a position of public or private trust . . . in a manner that significantly facilitated the commission or concealment of the offense." His position allowed him to stop the victims, keep police away from the scene,⁴ and avoid investigation of the events for weeks or years after their occurrence.⁵ The two level adjustment at Counts Nine and Ten is appropriate.

Lastly, because of the error of the defendant's arguments above, no adjusted calculations are necessary under § 3D1.4.

⁴ Testimony at trial indicated that China was able to wave off a Philadelphia police officer who stopped near the City Line exit while China was in the process of stealing the kilogram of cocaine.

⁵ It wasn't until sometime after the seizure of the money that Deon Steave approached Trooper Boyd in Pittsburgh and asked him about what happened to his money. In the case of the stolen kilogram of cocaine, it was not until years later that an investigation of this event occurred.

VI. GOVERNMENT OBJECTION TO PSI

The government believes that, at ¶18, defendant China should receive a two level increase under Section 3C1.1, for perjury at trial. China's explanations of his reasons for being at the King of Prussia mall, for stopping Deon Steave and Brynda Pope, and for giving them a DL-640 containing a fictitious state trooper's name were incredible and rejected by the jury. Likewise, his testimony that he stopped Steave and "T.B." but did not take money or drugs from them was rejected by the jury, as evidenced by its verdict.

The government submits that the two level increase is appropriate for perjury in this case, because, the defendant gave false testimony, concerning a material matter, with the willful intent to provide false testimony. See United States v. Dunnigan, 507 U.S. 87, 94 (1993).

Frank China testified that he stopped T.B. and Terrence Perkins because of expired inspection and emissions stickers (Notes of Testimony (N.T.), 6/30/03, at 5). Although claiming to smell the faint odor of marijuana in the car, he stated that he believed the mens' story that

they had earlier smoked marijuana and had no more in the car (N.T. at 6). He decided to give them a break that day and let them go (N.T. at 7-8). He denied taking any drugs from their car (N.T. at 8).

China then claimed that he began hearing rumors in the neighborhood that he had stolen drugs from the men (N.T. at 9). He confronted Perkins about these rumors (N.T. at 11), and testified that Perkins told him that he made up these rumors to cover up his loss of a kilo of cocaine (N.T. at 11). China then testified that Perkins told him that if he did him (Perkins) a favor, he (Perkins) would clear China's name on the street (N.T. at 12).

Incredibly, based upon these "facts," China testified that he nonetheless agreed to stop a car for Perkins and make sure that the occupant had no guns in order to clear his (China's) name (N.T. at 12). About two to three weeks later, China said that he stopped the Deon Steave car⁶, searched it, and gave Brynda Pope a DL-640 with

⁶ China said that, although he was supposedly checking this car out to see if the occupant had a gun, he did not ask for backup (N.T. at 41) and never notified his supervisors about his plan of action or of the rumors about himself (N.T. at 30; 42). Furthermore, he claims that he

the name Robert Miller on it, because he didn't want his name to be involved in anything else. He denied knowing how the notation that an unknown amount of money had been seized got onto the DL-640 (N.T. 20-21).⁷

China also testified that when he gave the statements to Trooper Lenoir at the time of his arrest, he was "in shock" (N.T. at 26). This explanation was used to try and explain away the inconsistencies of originally telling Lenoir (a) that he saw the male at the King of Prussia mall but did not approach him; and (b) that he finally did approach the male but did not know if he gave him a DL-640 (N.T. at 28).

Under Section 3C1.1, comment. (n.2), in applying this provision in respect to alleged false testimony or statements by the defendant, the court should be cognizant that inaccurate testimony or statements sometimes result

did these things for Terrence Perkins, although he did not really know who Perkins was, and he did not run Perkins' criminal record (N.T. at 51).

⁷ China said that he used the DL-640 so that he would have a record of Brynda Pope's name (N.T. at 37), but did not write her a ticket because he cut her a break that day (N.T. 43).

from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.

In this case, however, it is clear that defendant China's testimony was not the result of confusion, mistake, or faulty memory. His testimony did not confuse or forget small or insignificant details; instead he lied about the key issues in this case.

The government therefore respectfully submits that a two level increase is appropriate at ¶¶ 18, 25, 31 and 37. With the addition of these two levels for obstruction, the defendant's sentencing range, based upon a total offense level of 33 and a criminal history category of I, is 135 to 168 months imprisonment.⁸

VII. SENTENCING RECOMMENDATION

The government submits that a substantial sentence of imprisonment is called for in this case. The defendant,

⁸ The adjusted offense level for Count One, at ¶39, is 30. The adjusted offense level for Count Nine, at ¶40, is 26. The adjusted offense level for Count Ten, at ¶41, is 24. The combined adjusted offense level is 33.

sworn to uphold the laws of the Commonwealth of Pennsylvania, instead chose to break them by robbing others of money and a kilogram of cocaine. His motivation in this case is unclear. He had the benefit of a good education and a secure well-paying job but chose to throw them away. As sad as that fact is for the defendant and his family, it also impacts on the citizens of this Commonwealth. His violation of his oath as a Pennsylvania State Trooper adds to the serious nature of his crimes. Our society requires a trust between the police and the individuals that they serve. China's actions clearly negatively impact on that trust. This court must make it clear, by the sentence imposed, that any crimes committed by the people entrusted with the very enforcement of our laws, will result in

imprisonment, not only as a sentence of punishment for the offender, but hopefully to deter any others similarly tempted to violate their oaths.

Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

MICHAEL A. SCHWARTZ
Assistant United States Attorney
Chief, Corruption

ANTHONY J. WZOREK
Assistant United States Attorney

CERTIFICATION

I certify that this document has been electronically filed and is available for viewing and downloading from the ECF system. In addition, a true and correct copy of the government's sentencing memorandum has been sent by facsimile to:

Richard J. Giuliani, Esq.
235 South 8th Street
Washington West Building
Philadelphia, PA 19106

ANTHONY J. WZOREK
Assistant United States Attorney
United States Attorney's Office
615 Chestnut Street; Suite 1250
Philadelphia, PA 19106-4476
(215) 861-8469
State Bar ID # 32639

DATE: _____